

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 1/26/2016	(3) CONTACT/PHONE James Caruso, Senior Planner/ (805) 781-5702	
(4) SUBJECT Hearing to consider two appeals by Matthew Ferinni/Beth Katsaris and Fred Vernacchia of the Hearing Officer's approval of a request by Forster-Gill, LLC for a Minor Use Permit/Coastal Development Permit DRC2014-00140 to allow modifications to an existing restaurant for patio seating, temporary patio/rain covers, and expanded operational hours, located at 268 Front Street in the Community of Avila Beach. District 3.			
(5) RECOMMENDED ACTION It is recommended that the Board adopt the resolution denying the appeals by Matthew Ferinni/Beth Katsaris and Fred Vernacchia and affirming the decision of the Planning Department Hearing Officer's approval.			
(6) FUNDING SOURCE(S) Department allocated general fund support	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. 45 minutes) <input type="checkbox"/> Board Business (Time Est.____)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)  N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A    Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) District 3			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / James Caruso, Senior Planner

VIA: Ellen Carroll, Planning Manager/Environmental Coordinator

DATE: 1/26/2016

SUBJECT: Hearing to consider two appeals by Matthew Ferinni/Beth Katsaris and Fred Vernacchia of the Hearing Officer's approval of a request by Forster-Gill, LLC for a Minor Use Permit/Coastal Development Permit DRC2014-00140 to allow modifications to an existing restaurant for patio seating, temporary patio/rain covers, and expanded operational hours, located at 268 Front Street in the Community of Avila Beach. District 3.

## **RECOMMENDATION**

It is recommended that the Board adopt the resolution denying the appeals by Matthew Ferinni/Beth Katsaris and Fred Vernacchia and affirming the decision of the Planning Department Hearing Officer's approval.

## **DISCUSSION**

### **Background**

On October 16, 2015, the Planning Department Hearing Officer heard and approved a request by Forster-Gill, LLC for a Minor Use Permit to allow the following changes to the operation of an existing restaurant:

- a. Expand restaurant use into the adjacent undeveloped portion of the site by 1800 square feet, for a total restaurant size of 2,550 square feet.
- b. The existing capacity of the restaurant remains unchanged at 100 people.
- c. 40 of the 100 allowable seats may be in the expansion area.
- d. A garden area at the rear of the expansion area
- e. Clean up time (after closure) for 90 minutes after close. Clean up activities must end by 12:00 a.m.
- f. Allow temporary rain covers over solar panels from October 15 to April 15 subject to approval of the Building Division.
- g. The rear setback area shall be covered in a manner consistent with the existing setback cover.

Other applicant requested changes to the restaurant operation were not approved by the Hearing Officer. The requests that were not approved included the allowance for the sale of hard alcohol (beer and wine sales are allowed currently allowed by Alcohol Beverage Control), allowing outdoor amplified music and later clean up hours. The Hearing Officer determined that alcohol licensing was the responsibility of ABC and no action was required as part of this land use permit.

A previous Minor Use Permit (MUP) was approved for the restaurant in 2004. This current MUP seeks to amend some of the conditions of approval of the 2004 MUP in addition to requesting a patio expansion.

On October 30, 2015, Matthew Ferinni and Beth Katsaris and Fred Vernacchia filed 2 appeals of the Hearing Officer's decision to approve the MUP.

## **Appeal Issues**

### **Ferinni/Katsaris Appeal**

The two appeals address several operational issues including expanded hours, the outdoor pizza oven, use of rear setback. One of the appellants' (Ferinni) property is located adjacent to and uphill from the restaurant site. The house was established during the Unocal Avila Beach cleanup as a result of a private agreement between the property owner and Unocal. Per the private agreement, the project site is subject to a vertical height limitation of 12 feet above a given point. This is a private agreement and does not require County enforcement.

**Issue #1: Expanded Hours.** The appellants are appealing the approved expanded hours.

#### ***Staff Response:***

Expanded hours: The restaurant's maximum operating and post closure clean up hours were originally approved as:

Restaurant closure: 10:30 p.m.  
Post Closure: 30 minutes after close

This MUP included a request for longer restaurant and post closure hours:

Restaurant closure: 11:00 p.m.  
Post Closure: 90 minutes (12:30 a.m. latest)

The Hearing Officer approved:

Restaurant closure: 10:30 p.m.  
Post Closure: 90 minutes after close (12:00 midnight latest)

The revision to the restaurant's hours was ultimately limited to an additional 60 minutes of cleanup activities. These hours and activities are part of a restaurant's usual operation and are needed to allow for standard maintenance and cleanup. The maximum hours of operation will occur from May 1 to October 30<sup>th</sup> of each year and only for the inside portion of the restaurant. The patio would still close at 9:30 p.m. From November 1<sup>st</sup> to April 30<sup>th</sup>, hours extend until 10:00 p.m. inside and 8:30 p.m. outside.

### **Issue #2: Rear Setback**

In general, the appellants assert that the applicant's use of the 10 foot rear setback includes activities and restaurant storage that are not allowed in this area.

#### ***Staff Response:***

The Avila Beach Specific Plan contains two rear setback requirements:

**B.4 Rear Setbacks:** Rear setbacks create a transition between uses at the rear of the lot, by allowing some open space and landscaping between buildings. Rear setbacks also create a place for service and parking access which minimizes pedestrian conflicts with vehicles crossing sidewalks on main commercial streets and reduces the visual impact of parking areas on the main streetscape.

**B.4.a Minimum Rear Setback:** In order to minimize visual and noise impacts of commercial uses on adjacent residential properties, rear setbacks in the commercial retail area shall be a minimum 10' setback from the property line.

The 10' rear setback abuts the appellants' property. The setback area contains storage racks of dry goods, air conditioner compressors, a grease trap and other restaurant related items. There is no landscaping in the setback as most of it is used for service entry, and for the above described items. Approximately two-thirds of the length of this setback area has been covered with a roof covering that shields the storage and activities in the setback area and helps to reduce noise emanating from the area.

In response to the appellants' testimony regarding this issue at the MUP hearing, the Hearing Officer added a condition requiring the roof covering be extended over the entire length of the building. This will attenuate the noise and other activities occurring in the setback.

### **Issue #3: Pizza Oven**

The appellants state that the smoke from an existing pizza oven constitutes a nuisance.

#### **Staff Response:**

The pizza oven was an addition to the originally approved project. An outdoor fireplace at that location was replaced by the pizza oven. There is a filter system on the oven stack. However, site visits and photographs verify that there are times when the pizza oven produces a smoke plume that extends a substantial distance to the north and west.

Excessive smoke can be determined to be a nuisance as a result of nuisance investigations and hearings. Nuisance investigations usually start with a series of complaints regarding the activity at issue.

CZLUO section 23.06.084 addresses odors:

"Any non-agricultural land use conducted in, or within one-half mile of an urban or village reserve line is to be so operated as not to emit matter causing noxious odors\* which are perceptible..."

LAND USE CATEGORY IN WHICH ODOR-PRODUCING USE IS LOCATED	POINT OF DETERMINATION
Residential, Office & Professional, Recreation, Commercial	At or beyond any lot line of the lot containing the use.
Industrial	At or beyond the boundary of the Industrial category

The Air Pollution Control District (APCD) also has nuisance rules regarding excessive smoke. Complaints made to the APCD can also result in action by that agency. However, no excessive smoke complaints have been received for this restaurant up to the time of the Planning Department Hearing on October 16, 2015. The

Hearing Officer did not find the pizza oven to be inconsistent with the neighborhood activities.

#### **Issue #4: Liquor License**

Another issue of appeal is the type of liquor license available to the restaurant. The original permit condition prohibited the sale of hard liquor. The applicant requested hard liquor be allowed to be sold at the restaurant.

#### **Staff Response:**

The Hearing Officer decided the issue of type of liquor license is the responsibility of California Alcohol Beverage Control (ABC). ABC has a well-developed process and criteria for approving different types of liquor licenses. The land use permit's inclusion of liquor license limitations was removed in lieu of the recognition that issuance of liquor licenses is the ABC's responsibility.

#### **Vernacchia Appeal**

This appeal cites the hours of operation and clean up time as the issue of appeal. No other information was received.

#### **Staff Response:**

See the response to Issue of Appeal No. 1 above.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

The project was referred to Public Works, Cal Fire, Avila Beach CSD and the Avila Valley Advisory Committee (AVAC). The Avila Beach Advisory Committee recommended approval for the proposed project at the August 10, 2015 meeting.

In addition, County Counsel has reviewed and approved the attached Resolution with findings and conditions.

#### **FINANCIAL CONSIDERATIONS**

This project is in the coastal zone and is not subject to an appeal fee. This appeal was processed using department allocated general fund support.

#### **RESULTS**

Affirming the Hearing Officer's decision and denying the appeal will mean the Minor Use Permit/Coastal Development Permit DRC2014-00140 is approved.

Upholding the appeal would mean the Hearing Officer's approval of the Minor Use Permit/Coastal Development Permit DRC2014-00140 would be overturned and result in the project being denied.

This hearing is consistent with communitywide results of encouraging a safe, healthy, and livable community.

### Attachments

1. Resolution Denying Appeals and Exhibits
2. Ferrini Coastal Appeal Letter
3. Vernachia Coastal Appeal Letter
4. Minutes from Planning Department Hearing of October 16, 2015
5. Materials Submitted at the Planning Department Hearing of October 16, 2015
6. Staff Report from the Planning Department Hearing of October 16, 2015